IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.21 OF 2004

Amarlal Baksharam Bachani. ... Petitioner.

vs

.

Hariram Sevaldas Bachani & others. ...Respondents

Mr.Ravi Kadam with B.B.Saraf i/b. R.S.Datar, for Petitioner.

Mr.P.G.Lad, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 28th June,2005

P.C.:-

1. By this petition, the petitioner challenges the Award made by the Arbitral tribunal. After having heard the learned Counsel for both the sides, in my opinion, the Award impugned in this petition is to be set aside on the sole reason that the respondent no.7-Arbitrator was interested in the subject matter of the Award. In paragraph no.5 of the petition, the petitioner has stated thus:-

> "The Petitioner has learnt that Respondent no.7 herein has agreed to purchase a flat in the said building, the dispute in respect of which was referred to the arbitration of Respondents nos.7 and 8. The Petitioner states that Respondent no.7 has paid a sum of Rs.30 lacs by 30 cheques of Rs.1 lakh each to Respondents nos.1 to 4 and has also paid a sum of Rs.20 lacs in cash towards purchase price of the said flat during the pendency of arbitral proceedings. The Petitioner states that the cheques given by Respondent no.7 were deposited for payment with the bankers of Respondents nos.1 to 4 viz. Union Bank of India, Pali Hill Branch, Mumbai. The Petitioner submits that the said action on the part of Respondent no.7 gives rise to a very serious doubt as regards his independence and impartiality as contemplated by Section 12 of the said Act of 1996. The Petitioner submits that on the aforesaid ground alone, the Award impugned in this Arbitration Petition is liable to be quashed and set aside."

Though the respondents have been served and are represented by a

Lawyer, these allegations have not been denied. Thus, not controverting the allegations quoted above clearly establishes that the respondent no.7-Arbitrator was interested in the subject matter of the Award and therefore, the Award made by the Arbitrator is liable to be set aside.

2. In the result therefore, the petition succeeds and is allowed. The award impugned in the petition is set aside. The respondents are directed to pay cost of this petition to the petitioner as incurred by the petitioner.